believed the two witnesses who identified the first appellant and disbelieved the appellant and, following the cases cited (to which may be added *Lewis,* 14 Cr. App. Rep. 135) the conviction must be quashed.

The case against this appellant was, however, quite strong enough to justify the application of section 2 of the Court of Criminal Appeal (Amendment) Ordinance 1937—1938, and we order a new trial.

The appeal of the second appellant was dismissed and the hearing of the appeal of the first appellant is allowed and his conviction is quashed but a new trial must be had in his case.

New Trial Ordered.

[APPELLATE CRIMINAL JURISDICTION]

PEDLOW, J.

October 19, 1939.

OMAR ARIFFIN v. REX.

[SINGAPORE MAGISTRATE'S APPEAL No. 68 of 1939]

Police Force Ordinance Cap. 177—Section 26 (i).

When a charge against an accused is made under Section 26 (i) of the Police Force Ordinance, the offence charged being that of sleeping while on duty, it is unnecessary for the prosecution to prove mens rea. Imprisonment is a suitable punishment for this offence, at any rate in time of war.

MAGISTRATE'S APPEAL.

S. K. Das for Appellant.

E. N. Griffith-Jones, Crown Counsel for the Crown.

The facts sufficiently appear from the judgment below.

Pedlow, J. delivered an oral judgment as follows. In this case I feel I must confirm the conviction and sentence.

The accused has been found guilty of being asleep while on duty and the evidence is abundantly clear that he was asleep. The offence becomes more grave when it is realised that it occurred whilst a state of war existed. From the fact that a platform had been erected underneath the Kallang Bridge and that the accused and two other constables were stationed there to do nothing else but to keep watch on that bridge it must have been abundantly clear to the appellant that his duties were important. Normally in peace-time departmental action may have been sufficient. In the present instance the Police have sent the case to Court as the Court can impose heavier penalties and also a prosecution in Court will doubtless become known to all other members of the Police Force and be a warning.

Mr. Das for the appellant argued that the learned Magistrate had misdirected himself as to the question of the accused's alleged dizziness. I do not agree that that is so. There was nothing whatever to support the suggestion of the accused's being dizzy except his own statement made after he had been found fast asleep. In fact he did not then complain that he was dizzy. His complaint was that he had a pain in the back. The accused's position on the platform, lying down with his cap removed, is much more consistent with his having deliberately lain down, not perhaps for the express purpose of going to sleep but at any rate with a view to relaxing the utmost vigilance, than with any theory of dizziness. I think the learned Magistrate quite correctly rejected the suggestion that the accused's being asleep was due in any way to illness.

The second point made in accused's favour was that *mens rea* had to be proved. I do not accept this contention. To do so would make this section of the Ordinance quite meaningless. No element of *mens rea* has to be proved. The question is simply, was the accused asleep on duty or was he not asleep? If he was asleep he was guilty.

As to sentence, I say quite frankly had I been trying the case as a Magistrate I would not have imposed quite so heavy a sentence. I would, however, have inflicted imprisonment as a warning to all other Police officers of the seriousness of the offence. But I would have imposed the minimum period which in my opinion would have been sufficient to prevent a repetition of the offence and I think less than a month would have been sufficient, as it is the fact of imprisonment and not the length of time which is the great deterrent. A sentence of one month in this case is not in my opinion unreasonable. This is the first case of its kind during the present war and I cannot hold that the sentence is excessive. I am following the ruling of the Court of Appeal and am not going to "polish" it.

The conviction and sentence are confirmed.

Appeal dismissed.